

Decision 03-09-004 September 4, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

David Stephan,

Complainant,

vs.

AT&T Broadband,

Defendant.

Case 03-02-012
(Filed February 13, 2003)

OPINION DISMISSING COMPLAINT

Summary

We dismiss the complaint of David Stephan (Stephan or complainant) against AT&T Broadband (AT&T)¹ for failure to state a cause of action upon which relief may be granted.

Procedural Background

AT&T filed its answer to Stephan's complaint on March 28, 2003, and, at the same time, filed a motion to dismiss the complaint. Complainant did not timely file a response to AT&T's motion, so the assigned Administrative Law Judge (ALJ) issued a ruling on May 19, 2003 directing Stephan to respond to AT&T's motion to dismiss. Subsequent to receiving the ALJ Ruling, Stephan called the ALJ to say that he had not received AT&T's answer or the motion. The

¹ AT&T Broadband is now doing business as Comcast Phone of California, LLC.

ALJ provided those documents to Stephan, and extended the time he had to respond to the motion to June 30, 2003. Stephan provided his response on June 30, 2003.

This complaint is a ratesetting proceeding. Though the Instructions to Answer indicated that a hearing might be necessary, we find that the matter can be decided on the pleadings and that no hearing is required.

Discussion

Stephan alleges inter alia (but not exclusively) the following: (1) Caller ID does not work on the set AT&T gave him as an inducement to sign up for service; (2) Anonymous Call Rejection does not work; (3) Call return does not work; (4) AT&T's literature offered 12-call blocking, but only provided 10; (5) equipment was defectively manufactured (cable, outside box, etc.) for others as well; (6) there are problems with Central Office equipment and other equipment; (7) repair service is in Idaho and cannot trace local calls; and (8) he has repeated loss of dial tone after AT&T's repair service calls him.

Stephan requests the following relief from AT&T: (1) provide full services as advertised (e.g., call blocking); (2) replace defective equipment (for others, as well); (3) provide repair service locally for local calls; and (4) repair problems promptly without loss of service.

In its Motion to Dismiss, AT&T asserts that the complaint fails to comply with Rule 10 of the Commission's Rules of Practice and Procedure. Rule 10 reads as follows:

[T]he complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired.

According to AT&T, the complaint does not fulfill those requirements. AT&T asserts that the complaint's incomplete statements are inconsistent, vague and incorrect on their face. AT&T believes that the complainant has hypothesized the root causes of his perceived issues and added speculative and inappropriate resolutions of those issues to his complaint. As a result, the relief requested in section G of the complaint makes little sense and leaves AT&T without the ability to adequately respond to the complaint.

AT&T states that complainant's first relief request appears to seek provision of call blocking, yet it is preceded with the notation "e.g." and the phrase "provide full services as adv," implying that the complainant might raise an issue at hearing as to any service or feature offered by AT&T. Since AT&T is unaware of any particular service or feature of complainant that is not functioning properly, including call blocking, AT&T is at a loss as to what relief the complaint is seeking or how to respond.

Complainant next seeks replacement of defective equipment. AT&T asserts that it is not in the business of selling equipment. Also, AT&T states that in sections F.1 and F.2(c) of the complaint, the complainant appears to reference the entire AT&T network and customer premise equipment. AT&T speculates that the complainant is asking the Commission to force AT&T to upgrade its network with capabilities that AT&T does not now provide.

AT&T states the complainant next seeks to have his repair service done locally. When complainant has a service issue, AT&T sends a technician to the complainant's residence. According to AT&T, while it is irrelevant to the complaint, AT&T states that its repair facility that serves complainant's residence is located in the city of Hollywood, California. AT&T asserts that it does repair problems promptly.

AT&T concludes that the complaint does not state a claim for which relief can be granted. AT&T speculates that it appears that Stephan would like his call blocking feature to accept 12 telephone numbers rather than the 10 that the feature will accept,² and he wants AT&T to provide him with new Caller ID premise equipment. However, AT&T says that it is unclear whether this will satisfy the complainant. Further, AT&T, after repeated visits to complainant's premise, cannot ascertain the exact problems complainant has with his services and features.

AT&T asserts that AT&T has not violated any Public Utilities Code section nor General Order 133-B or any other general order. AT&T states that if the complaint were to go forward and AT&T were ordered to ensure that the complainant's service and features worked correctly, AT&T could do no more than it is doing today to satisfy the complainant.

AT&T concludes that Stephan's complaint is so broad and vague that AT&T cannot possibly prepare an adequate defense. AT&T requests that the complaint be dismissed, asserting that until the complainant can tell the Commission and AT&T exactly what services or features are not being adequately provided, what the failings are in the services or features being offered to complainant, and what the complainant has attempted to do to have

² The Call Blocking feature allows a customer to program into his serving switch a number of telephone numbers for which the customer wishes to have the serving switch block from completing to the customer's phone. The AT&T Call Blocking feature can accept up to 10 phone numbers. AT&T, for a short period of time, indicated in promotional material that Call Blocking could accept 12 numbers. This is incorrect and customers were apprised of this error.

AT&T repair the problems, the complaint simply does not satisfy the legal requirements to go forward to adjudicate the complaint.

In his filing on June 30, 2003, Stephan replied to AT&T's Answer, as well as to the ALJ Ruling that directed Stephan to respond to AT&T's Motion to Dismiss. Complainant made three points regarding the Motion to Dismiss:

1. He had never used 3-way calling and never complained about it; he indicates that he was told a technician was coming to his house to test his AT&T 953 Caller ID instrument;
2. He received an unsealed, empty envelope from AT&T;
3. The PUC should take notice of all other AT&T customers similarly situated with respect to equipment, repair services, representations of services, failure to provide services, etc.

Stephan does not refute AT&T's assertion that AT&T has not violated any Public Utilities Code section or General Order.

Stephan insists that he is entitled to be able to block 12 telephone numbers, but AT&T responds that technical limitations preclude blocking more than 10 numbers. This Commission does not regulate Customer Premise Equipment and has no jurisdiction over issues relating to the equipment that AT&T provided to Stephan. Therefore, the Commission would be unable to grant the relief complainant requests with regard to the Caller ID instrument. In any event, as AT&T states, technical limitations of the equipment allow the customer to block up to 10 phone numbers, not 12 numbers, as AT&T initially advertised.

Stephan claims that he received an unsealed empty envelope from AT&T. The Commission is not in a position to determine whether or not complainant received an empty envelope from AT&T. The assigned ALJ provided Stephan with both AT&T's Answer and the Motion to Dismiss, and also extended

Stephan's time to respond to AT&T's Motion, to ensure that Stephan's due process rights were met.

Stephan would turn his individual complaint into an investigation involving all other AT&T customers and all elements of service including equipment, repair services, what service is provided, etc. Such a global examination is not warranted, since the specific allegations presented in this case relate only to complainant's service. Complainant makes reference to defective equipment of "others" as well, but that vague reference lacks the specificity needed for the Commission to examine the issue. If complainant wants to file a complaint that involves others, he should have signed affidavits from those customers, with specific allegations of service problems they have encountered. There is nothing in the complaint submitted by Stephan to indicate that other customers have similar issues with AT&T's service. Therefore, we must limit our review to Stephen's complaint regarding his own service.

Rule 10 requires a complainant to provide specifics as to the nature of the complaint and the relief requested. Stephan has not complied with this requirement. He states that equipment was "defectively manufactured," but does not provide a list of specific equipment with an explanation of exactly how the equipment malfunctions. He references problems with "Central Office equipment and other equipment" that could refer to virtually any equipment in AT&T's network. He also says that others have the same problems with equipment, but he mentions no specifics, and does not include affidavits from other customers describing their specific service problems.

In his response to AT&T's Motion to Dismiss, complainant does not respond to the specific points raised by AT&T, namely that complainant's request is overly broad and confusing and requests relief beyond the

Commission's power to grant. Accordingly, we will dismiss the complaint. It fails to state a cause of action for which we may award relief since:

(1) complainant alleges no violation of Commission rule or order; (2) this Commission does not regulate Customer Premise Equipment and therefore cannot grant relief relating to allegedly faulty equipment; (3) the complaint refers to defective equipment of other customers but provides no specific information; and (4) complainant's allegations are overly broad and not specific enough for AT&T to respond to them and for the Commission to adjudicate the dispute.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on August 19, 2003. We have taken those comments into account in finalizing this order.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Karen A. Jones is the assigned ALJ in this proceeding.

Findings of Fact

1. The complaint does not allege violation of any Public Utilities Code section nor General Order 133-B or any other General Order.

2. The complaint makes general statements about problems with Central Office equipment and other equipment, without providing specific information on the equipment involved or the problems with it.

3. The complaint requests relief for other customers with defective equipment but provides no specific information about who those customers are or the specific problems they have with AT&T's service.

Conclusions of Law

1. The complaint fails to comply with Rule 10 of the Commission's Rules of Practice and Procedure.
2. Allegations regarding faulty Customer Premise Equipment are beyond the jurisdiction of this Commission.
3. The complaint should be dismissed for failure to state a cause of action for which relief may be granted.
4. No hearings are necessary.

O R D E R

IT IS ORDERED that:

1. The complaint of David Stephan against AT&T Broadband is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated September 4, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners